

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-208830

DATE: October 20, 1982

MATTER OF: BVI Engravers, Inc.

DIGEST:

1. Whether product complies with contract specifications is a matter of contract administration which is the responsibility of the procuring agency, not GAO.
2. GAO will review protests concerning contract modifications only if it is alleged that at the time of award the agency intended to make such changes after award, or that the modifications went beyond the scope of the contract.

BVI Engravers, Inc. protests the award of a contract to Electro-Chem Etch Metal Markings, Inc. by the General Services Administration (GSA) under solicitation No. FTP-BT-F0075-A for electric etchers. BVI contends that the electric etchers being supplied by Electro-Chem do not comply with the solicitation specifications. We dismiss the protest.

The contract was awarded to Electro-Chem on May 5, 1982, and BVI subsequently protested this action to GSA. In its protest, BVI suggested that the electric etchers offered by Electro-Chem did not meet the specifications relating to the product's construction and requested that GSA inspect the product. GSA responded that Electro-Chem's bid had been responsive--that is, on its face it represented an unequivocal offer to meet the solicitation's specifications--and since the firm was judged responsible, it was entitled to award as the low bidder. GSA also advised that Electro-Chem's preproduction samples, furnished after award, indeed had undergone laboratory testing and inspection, and were accepted as meeting the specifications.

GSA also noted, however, that in view of the nature and extent of BVI's complaint, the preproduction samples were reinspected by the agency's Quality Control division. This reinspection revealed that the product actually did not comply with two features of the specifications. As a consequence, GSA asked Electro-Chem to correct these deficiencies. GSA advised:

"* * * the contractor requested a deviation from the specification and offered to reduce the contract price accordingly. It is considered in the best interest of the Government, for this contract period, to accept the material offered. Electro-Chem * * * was the previous contractor * * * [and] no quality complaints have been received."

BVI contends that the electric etchers offered by Electro-Chem actually deviate from six areas of the specifications and that these deviations work to the Government's detriment. BVI further states that if it had known that the agency would relax the specifications after award, it would have offered a different tool than it did, one which would not have met all of the specifications but would have met GSA's performance needs.

Whether the product provided by Electro-Chem complies with the contract specifications in whole or in part is a matter of contract administration, which is the responsibility of the procuring agency, not our Office. Home Oxygen & Medical Equipment, Inc., B-201370, December 29, 1980, 80-2 CPD 445. Moreover, the decision to modify a contract where an agency discovers that the items furnished in fact do not meet all specifications, instead of terminating the contract and meeting the agency's needs through another source, similarly is a matter of contract administration within the authority and responsibility of the procuring agency. Our Office will review a protest concerning such modifications only if it is alleged that at the time of award the agency intended to modify the contract after award, Aul Instruments, Inc., B-199416.2, January 19, 1981, 81-1 CPD 31, or that the modification went beyond the scope of the contract and should have been the subject of a new procurement. Webcraft Packaging, Division of Beatrice Foods Co., B-194087, August 14, 1979, 79-2 CPD 120. Neither situation is apparent here. All that happened is that

GSA belatedly discovered, after award, that the equipment to be furnished by its contractor would not meet the specifications in every respect. As indicated above, it is up to the agency to determine the best course of action in such a situation, and its decision is not reviewable under our protest procedures.

The protest is dismissed.

We note, however, that although GSA's requirements necessitated accepting Electro-Chem's nonconforming etchers for the period of this contract, the agency nonetheless has advised the protester that it is reviewing the specifications that were used in this competition for possible revision in future procurements. We presume that any revision will be designed to relax or otherwise modify the specifications to insure maximum competition against a common requirement.

Harry R. Van Cleve
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Acting General Counsel